



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire
Local 1984 SEIU,

Complainant

v.

State of New Hampshire

Respondent

Case No. S-0401

Decision No. 2001-119

PRE-HEARING DECISION and ORDER

BACKGROUND

State Employees Association of New Hampshire Local 1984 SEIU, (hereinafter referred to as the "Union") filed unfair labor practice charges against the State of New Hampshire on December 21, 1998 alleging violations of RSA 273-A:5 I (e), (h) and (i) for refusal to bargain and breach of contract by (1) refusing to meet in accordance with the collective bargaining agreement over terms and conditions of employment for certain part-time employees; (2) refusing to provide a list of part-time workers in conformity with PELRB Decision No. 1998-82, and (3) implementing unilateral changes in holiday pay and shift differentials for certain part-time employees. The State of New Hampshire filed responsive pleadings in the form of a Motion to Dismiss, with four exhibits attached, on January 5, 1999. Thereafter, the matter was heard by the PELRB on March 18, 1999 after an earlier continuance.

The PELRB ordered (Decision #1999-033), *inter alia*, that the State pay holiday benefits to certain part-time employees of the New Hampshire Department of Environmental Services (DES). The State filed its Motion for Reconsideration on May 14, 1999 to which the Union objected on May 27, 1999. Following consideration of the parties' respective pleadings, the PELRB denied the State's Motion for Reconsideration. (Decision #1999-060).

The State thereafter filed its appeal of the PELRB denial with the New Hampshire Supreme Court on July 20, 1999. The matter was briefed by the parties and subsequently argued before that body. On May 24, 2001 the New Hampshire Supreme Court issued its decision remanding this matter to the PELRB to make factual findings as to whether the parties intended to include part-time employees in the original certified bargaining unit as there is the potential that such findings could be dispositive of the appeal.

Since the date of the original complaint and the proceedings that have transpired to date, the parties have negotiated a new collective bargaining agreement, effective July 1, 2001. Those negotiations and the resulting contract have prospectively addressed the relevant issue on remand, *i.e.* inclusion of part-time workers in the bargaining unit and benefits thereby accruing to them.

PARTICIPATING REPRESENTATIVES

For the Complainant: Dennis Martino, Executive Assistant SEIU, SEA-NH

For the Respondent: Thomas F. Manning, Director, Division of Personnel.

PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

1. Whether or not the issue on remand has become moot?
2. Whether the parties intended to include part-time employees in the original certified bargaining unit?

WITNESSES

For the Complainant:

To be identified and provided to the Respondent on or before December 7, 2001

For the Respondent:

To be identified and provided to the Complainant on or before December 7, 2001

Both parties reserve the right to amend their List of Witnesses in conformity with administrative Rule Pub 203.01 (b), but are to comply with the initial identification of witnesses on December 7, 2001 as provided above. Each shall also forward a copy of any Witness List to the PELRB at the same time. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

To be identified and provided to the Respondent on or before December 7, 2001

For the Respondent:

To be identified and provided to the Complainant on or before December 7, 2001

Both parties reserve the right to amend their List of Exhibits in conformity with the date stated above or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Administrative Rule Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for a hearing of this matter is one (1) day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order

DECISION AND PRE-HEARING ORDER

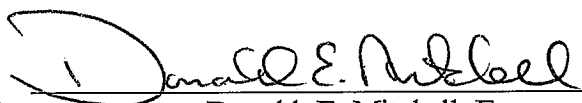
Both parties made representations to the Hearing Officer that negotiations have transpired concluding in a new collective bargaining agreement that has addressed the relevant issue on remand involving part-time employees and that the parties believed that the issue has already been prospectively addressed by the new CBA. The parties also requested time before a hearing on the remand was conducted to address a remaining related issue that may make the State's appeal moot. Following discussion at the Pre-Hearing Conference, it was ordered as follows:

1. The parties shall meet and confer regarding any relevant remaining issues and forward a jointly signed written communication to the PELRB on or before

November 30, 2001 indicating whether or not the issue on remand has been resolved by the parties and whether or not the parties desire to participate in any further evidentiary proceedings in this matter. The joint statement shall also indicate whether or not the parties consider the matter moot.

2. In the event the matter has not been resolved and is to proceed to the evidentiary hearing on the remanded issue, then in that event, the parties shall exchange Witness and Exhibit lists and forward a copy of each to the PERLB on or before December 7, 2001.
3. The party representatives shall meet, or otherwise arrange, to pre-mark exhibits for identification purposes and exchange copies of their respective proposed exhibits, excepting those singularly required for impeachment purposes, prior to the evidentiary hearing. Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
4. Any preliminary, procedural or dispositive motions shall be filed by the parties no later than ten (10) days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on December 18, 2001 beginning at 9:30 AM.

Signed this 19th day of November, 2001.


Donald E. Mitchell, Esq.
Hearing Officer